E2

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: APR 16 2004

IN RE: Applicant [redacted]

APPLICATION: Application for Certificate of Citizenship under section 201(g) of the Nationality Act of 1940; 8 U.S.C. (1940 Ed.) § 601(g).

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

DISCUSSION: The application was denied by the Interim District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born on April 19, 1947, in the Philippines. The record reflects that the applicant's mother, [redacted] was born in the Philippines, and was not a United States (U.S.) citizen. The applicant's father, [redacted] was born on February 7, 1925, in the Philippines. The applicant's parents married on July 10, 1946, in the Philippines. The applicant seeks a certificate of citizenship under section 201(g) of the Nationality Act of 1940 (the Nationality Act); 8 U.S.C. § 601(g), based on the claim that his father is a derivative U.S. citizen and that he derived U.S. citizenship at birth through his father.

The interim district director determined that the applicant failed to establish that either of his parents were U.S. citizens at the time of his birth. The interim district director concluded that the applicant therefore did not qualify for a certificate of citizenship pursuant to section 201(g) of the Nationality Act, and the application was denied accordingly.

On appeal counsel asserts that the interim district director's decision was legally and procedurally flawed. Counsel asserts that pursuant to Section 1993 of the Revised Statutes of the United States of 1878 (section 1993 of the Revised Statutes), the applicant's father (Mr. [redacted] erived U.S. citizenship through his mother [redacted] who was born in the Philippines on May 12, 1902. Counsel asserts tha[redacted] derived U.S. citizenship through her father [redacted] who was born in Ontario, Canada on March 6, 1876, and who resided in the U.S. for many years and became a naturalized U.S. citizen in the 1880s. In addition, counsel asserts that the Service violated the applicant's procedural due process rights by being unprepared and unfamiliar with the applicant's case during his citizenship interview and by failing to schedule a second interview for the applicant prior to rendering a decision in his case.

The AAO is not persuaded by counsel's assertion that the applicant's procedural due process rights were violated. The record reflects that the applicant was afforded a citizenship application interview. The record additionally reflects that the evidence and legal arguments submitted and made by the applicant and counsel were reviewed and taken into consideration in the interim district director's decision. Moreover, the record reflects that the interim district director's decision referred to and applied relevant citizenship statutory and legal case law to the applicant's case. The AAO therefore does not find that the applicant's procedural due process rights were violated or that the applicant was deprived of a fair and impartial citizenship interview.

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service,* 247 F.3d 1026,1029 (9th Cir., 2000) (citations omitted). The applicant was born on April 19, 1947. Section 201(g) of the Nationality Act is therefore applicable to his derivative citizenship claim. In order for a child born outside of the United States to derive citizenship from one U.S. citizen parent pursuant to section 201(g) of the Nationality Act, it must be established that, when the child was born, the U.S. citizen parent resided in the U.S. or its outlying possession for 10 years, at least 5 of which were after the age of 16. *See* § 201(g) of the Nationality Act.

Counsel asserts on appeal that the applicant's father (Mr. [redacted] derived U.S. citizenship through his mother [redacted] and that [redacted] nd [redacted] residence in the Philippines during the years that the Philippines were considered a possession of the U.S. qualifies as residence in the

United States for section 1993 Revised Statutes, derivative U.S. citizenship purposes.

Section 1993 of the Revised Statutes, which applies to children born abroad to U.S. citizens prior to May 24, 1934, states that:

> All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States.

The Immigration and Nationality Technical Corrections Act of 1994 amended section 1993 of the Revised Statutes to allow children born outside of the jurisdiction of the United States to also derive U.S. citizenship through U.S. citizen mothers who had resided in the United States.

Counsel asserts that the applicant's grandmothe[redacted] was born in the Philippines to U.S. citizen parents, and that her father,[redacted] reviously resided in the United States. Counsel asserts [redacted] therefore derived U.S. citizenship pursuant to section 1993 of the Revised Statutes.

The record reflects tha[redacted] was a naturalized U.S. citizen and that he resided in the U.S. for many years. The AAO notes, however, that the record does not contain a marriage certificate to indicate that [redacted] n[redacted] arried in 1902. The record also does not contain[redacted] irth certificate. In their stead, counsel submits, as exhibit B, an original and translated document stating that:

> The girl[redacted] partially blotted out][redacted] been legitimized [?] by the subsequent marriage between Mr. [?] [illegible[redacted]d[redacted]
> [illegible words]
> On the twenty-second [?] of May, nineteen hundred two. I, the undersigned Parish pastor [illegible word] of this town of [illegible words] of Our Lady of Borongan [illegible words]
> [illegible signature]

Exhibit B additionally includes an original and translated Baptismal document stating in pertinent part that:

> On the twenty-ninth day of the month of May, nineteen hundred two, I, the Undersigned Parish pastor . . . solemnly baptized . . . a girl who was born on the twelfth of February, one thousand [illegible word] year [illegible words] at ten in the evening, who has been named[redacted] . . . is the first natural daughter of M g[?] [illegible word] and of [redacted] ndigenous to this town . . . .

The AAO notes its concerns regarding the probative value of the Exhibit B documents. However, because the issue of whether[redacted] was a legitimated child o[redacted] for derivative citizenship purposes is ultimately not determinative in the present case, the AAO will accept the exhibit B documents as evidence that[redacted] was the legitimated child o[redacted] nd as evidence that she was therefore a U.S. citizen at birth pursuant to section 1993 of the Revised Statutes. *See Matter of K-W-S-*, 9 I&N Dec. 396, 402 (BIA 1961).

The AAO notes that based on the evidence contained in the record [redacted] resided in the Philippines for her entire life. Counsel asserts that pursuant to section 201 of the Nationality Act, residence in an outlying possession of the United States qualifies as residence for derivative citizenship purposes. *See* section 201(g) of the Nationality Act (stating that in order to derive citizenship from a U.S. citizen parent, a child born outside of the United States must establish that the parent resided in the U.S. or its outlying possessions.) Counsel asserts further that, although section 1993 of the Revised Statutes itself does not mention or address the issue of outlying possessions, Congressional history and records relating to the passage of the Nationality Act of 1940 nevertheless make it clear that section 1993 of the Revised Statutes inherently included in its definition of "residence in the United States" a citizen's residence in an outlying possession. Counsel asserts that rather than viewing the outlying possession language in section 201(g) of the Nationality Act as a change or modification to residence requirements for U.S. citizen parents, the language should be viewed as a clarification or restatement of existing policy under section 1993 of the Revised Statutes. In support of his assertion, counsel submits numerous pages of congressional records and testimony relating to the passage of the Nationality Act.

The AAO finds counsel's assertion that the definition of "United States" for section 1993 residence requirements purposes included residence in outlying possessions of the U.S. to be contrary to precedent setting Ninth Circuit Court of Appeals legal decisions on the issue. Moreover, although not mentioned on appeal, counsel acknowledges in footnote 16 of his original application brief, that the Ninth Circuit Court of Appeals squarely addressed the outlying possession and residence issues raised in the present appeal, in its 1999 decision, *Friend v. Reno,* 172 F.3d 638 (9th Cir. 1999).

Like the issue presently before the AAO, the issue on appeal in *Friend v. Reno,* was whether residence in the Philippines qualified as residence in the United States for derivative U.S. citizenship purposes. The Ninth Circuit Court of Appeals clarified in *Friend* that "[t]he Fourteenth Amendment provides in relevant part that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." *Friend* at 641. The Ninth Circuit Court of Appeals noted that "[s]ection 1993 [of the Revised Statutes] itself provides no clear definition of the term "United States," and no cases have expressly addressed this ambiguity" and that, "[t]his lack of a clear definition is not surprising given the fact that, at the time of section 1993's original enactment in 1855, the United States had yet to annex unincorporated territories such as the Philippines." *Id.* Quoting from a previous Ninth Circuit Court of Appeals decision, *Rabang v. Immigration & Naturalization Service,* 35 F.3d 1449, 1452 (9th Cir. 1994), the Ninth Circuit then reiterated its holding that, "birth in the Philippines during the territorial period does not constitute birth in the United States under the Citizenship Clause of the Fourteenth Amendment, and thus does not give rise to United States citizenship." *Id.* (internal quotations and citations omitted).

The Ninth Circuit Court of Appeals noted in *Friend v. Reno,* that section 201(e) of the Nationality Act:

> [R]eplaced part of Rev. Stat. § 1993, and stated that a citizen of the United States could transfer his or her citizenship to a child born in an "outlying possession of the United States if that parent had "resided" in the United States or one of its outlying possessions prior to the birth of such person.

Friend, supra, at 643. However, after reviewing and analyzing congressional and legislative records relating to the passage of the Nationality Act of 1940, the Ninth Circuit Court of Appeals concluded that the legislative history surrounding the passage of the Nationality Act was of little assistance in interpreting section 1993 of the Revised Statutes, and that any guidance from the legislative history of the Nationality Act supported a finding that the 1940 Act represented a modification of the prior law on residence in the United States rather than a clarification or restatement of the prior law. *See Friend* at 643. Accordingly, the Ninth

Circuit Court of Appeals concluded that **the definition of "United States" for section 1993 Revised Statutes purposes did not include an outlying possession such as the Philippines.** *Id.* at 648. The Ninth Circuit Court of Appeals concluded further that, **"[r]esidence in the Philippines during its territorial period does not qualify as residence "in the United States" under Rev. Stat. § 1993."** *Id.* At 648. [Emphasis added].

In an effort to persuade the Immigration and Naturalization Service (Service, now Citizenship and Immigration Services, CIS) not to apply the precedent setting Ninth Circuit Court of Appeals *Friend* decision to the applicant's case, counsel asserts in footnote 16 of his original brief, his opinion that the Ninth Circuit Court of Appeals misread congressional and legislative history, grossly misapplied the law, and erroneously concluded that the Nationality Act of 1940 was a modification of prior law rather than a clarification or restatement of section 1993 of the Revised Statutes' policy.

The AAO notes first that the present application arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO notes further that, "[i]t is undisputed that a federal agency is obligated to follow United States circuit court precedent in applicable cases originating within that circuit" and that "[a] decision by a [circuit court], not overruled by the United States Supreme Court, is . . . binding on all inferior courts and litigants in the [circuit], and also on administrative agencies." *See Matter of Jesus Enrique Rodriguez-Tejedor,* 23 I&N Dec. 153, (BIA 2001) (internal citations and quotations omitted). The AAO finds that it is therefore bound by the Ninth Circuit Court of Appeals, *Friend v. Reno,* holding that "[r]esidence in the Philippines during its territorial period does not qualify as residence in the United States under Rev. Stat. § 1993." *Friend, supra* at 648.[1]

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant in this case has not met the burden of establishing that his grandmother, [redacted] resided in the United States as required under section 1993 of the Revised Statutes. The applicant thus failed to establish that his father, [redacted] derived U.S. citizenship status through [redacted] The applicant therefore does not qualify for consideration for citizenship purposes under section 201 of the Nationality Act and the appeal will be dismissed.

ORDER: The appeal is dismissed.

---

[1] The AAO notes that, even if the applicant's case did not fall within the jurisdiction of the Ninth Circuit Court of Appeals, the matter is additionally controlled by the Board of Immigration Appeals decision, *Matter of Hermosa,* 14 I&N Dec. 447 (BIA 1973) by which the AAO is also bound. *See* 8 C.F.R. § 3.1(g). *Matter of Hermosa* clearly states that the Philippine Islands are not deemed to be part of the United States for purposes of the citizenship clause of the Fourteenth Amendment.